

AMENDED IN ASSEMBLY APRIL 17, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2363**

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**Introduced by Assembly Member Chesbro**

February 24, 2012

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An act to amend ~~Section 2901~~ of Sections 8103, 8280.3, and 8841 of, and to add and repeal Section 9002.5 of, the Fish and Game Code, relating to ~~wildlife habitat assessment districts~~ commercial fishing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2363, as amended, Chesbro. ~~Natural habitat.~~ Commercial Fishing.

(1) Existing law relating to limited entry fisheries requires the Department of Fish and Game to transfer a permit for a limited entry fishery, upon application, to a parent, spouse, child, or sibling of a permittee whose death was the result of an accident that occurred after January 1, 1986.

This bill would require the department to transfer a permit for a limited entry fishery, upon application, to a parent, spouse, child, sibling, domestic partner, or the estate of a permittee whose death occurred after January 1, 2010, without reference to the cause of death.

(2) Existing law regulating the Dungeness crab fishery permits the owner of a vessel to whom a Dungeness crab vessel permit has been issued, upon the written approval of the department, to temporarily transfer the permit to another replacement vessel for which use in the Dungeness crab fishery is not permitted, for a period of not more than 6 months during the current permit year, under specified circumstances. Existing law also permits the transfer of a permit to another vessel in the event of loss or destruction of a permitted vessel, within 2 years after the loss or damage of the original vessel.

*This bill would require the owner of a vessel to whom a Dungeness crab vessel permit has been issued to have had Dungeness crab landings of not less than 5,000 pounds cumulative for the past 2 years. The bill also would require the replacement vessel to be equivalent in size and capacity, as specified, to the vessel from which the permit is transferred.*

*(3) Existing law grants the Fish and Game Commission authority over bottom trawl fisheries not managed under the federal Magnuson-Stevens Fishery Conservation and Management Act or specified state law, and specifically grants the commission authority over listed fisheries. Existing law, except as specified, makes it unlawful to engage in bottom trawling in ocean waters of the state. Under existing law, the commission is authorized to authorize additional fishing areas for bottom trawls only if it makes a prescribed determination.*

*This bill would authorize the commission, notwithstanding that provision generally prohibiting bottom trawling in ocean waters of the state, to authorize additional fishing areas for bottom trawls in any waters of the state if it makes that prescribed determination.*

*(4) Existing law regulating commercial fishing traps makes it unlawful, except as specified, to willfully or recklessly disturb, move, or damage any trap that belongs to another person and that is marked with a buoy identification number.*

*This bill would authorize a person holding a commercial fishing license to retrieve and bring to shore Dungeness crab traps in ocean waters under specified circumstances. The bill would authorize the department, in consultation with Dungeness crab permitholders or their representatives, to establish regulations as necessary to implement and enforce the trap retrieval provisions. Those provisions would become inoperative on April 1, 2019, and would be repealed on January 1, 2020.*

~~The Habitat Maintenance Funding Act authorizes a local agency to establish an assessment district, pursuant to specified existing law governing the establishment of habitat maintenance assessment districts, for the improvement or maintenance of natural habitat, in a manner consistent with specified policies and procedures. The act requires that the local agency establish such a district only pursuant to a plan for the conservation of natural habitat approved by the department.~~

~~This bill would require that the plan also be specifically authorized by certain statutes.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 8103 of the Fish and Game Code is  
2 amended to read:

3     8103. (a) The Legislature finds and declares as follows:

4     (1) ~~The accidental death of a limited entry permittee results in~~  
5 ~~great hardships on the permittee's family.~~

6     (2) Under the law as it existed immediately prior to January 1,  
7 1987, if a member of the permittee's family has not been actively  
8 working in the fishery, the limited entry permit could not be  
9 transferred to a member of the family, an action ~~which~~ *that* deprives  
10 the family of the opportunity to continue to derive a livelihood  
11 from the fishery and ~~which~~ *that* imposes greater hardships.

12     (3) When there is ~~an accidental~~ *a* death of a limited entry  
13 permittee, a transition period is necessary to allow a family member  
14 to join the fishery and to become acclimated, knowledgeable, and  
15 experienced in the fishery.

16     (b) Notwithstanding Section 8102, the department shall transfer  
17 a permit for a limited entry fishery, upon application, to a parent,  
18 spouse, child, ~~or sibling,~~ *domestic partner; or the estate of a*  
19 ~~permittee whose death was the result of an accident which occurred~~  
20 ~~after January 1, 1986~~ *2010*.

21     (c) Application for the transfer of a permit pursuant to  
22 subdivision (b) shall be made on or before January 1, ~~1987~~ *2011*,  
23 or not more than one year after the death of the permittee,  
24 whichever is later.

25     (d) The director may authorize another person, when requested  
26 by the new permittee, to serve in the place of the new permittee  
27 and to engage in fishing activities under the authority of the limited  
28 entry permit for not more than two years from the date of the permit  
29 transfer.

30     (e) ~~"Accidental death" means death resulting directly and solely~~  
31 ~~from any of the following:~~

32     (1) ~~An accidental injury visible on the surface of the body or~~  
33 ~~disclosed by an autopsy, sustained solely by external, violent, and~~  
34 ~~accidental means.~~

35     (2) ~~A disease or infection resulting directly from an accidental~~  
36 ~~injury and beginning within 30 days after the date of the injury.~~

37     (3) ~~An accidental drowning.~~

1     *SEC. 2. Section 8280.3 of the Fish and Game Code is amended*  
2     *to read:*

3     8280.3. (a) Notwithstanding Article 9 (commencing with  
4     Section 8100) of Chapter 1 and except as provided in this section,  
5     a Dungeness crab vessel permit shall not be transferred.

6     (b) The owner of a vessel to whom a Dungeness crab vessel  
7     permit has been issued shall transfer the permit for the use of that  
8     vessel upon the sale of the vessel by the permitholder to the person  
9     purchasing the vessel. Thereafter, upon notice to the department,  
10    the person purchasing the vessel may use the vessel for the taking  
11    and landing of Dungeness crab for any and all of the unexpired  
12    portion of the permit year, and that person is eligible for a permit  
13    pursuant to Section 8280.1 for the use of that vessel in subsequent  
14    years. The person purchasing the vessel shall not transfer the permit  
15    for use of that vessel in the Dungeness crab fishery to another  
16    replacement vessel during the same permit year.

17    (c) The owner of a vessel to whom the Dungeness crab vessel  
18    permit has been issued may transfer the permit to a replacement  
19    vessel of equivalent capacity, except as specified in this section.  
20    Thereafter, upon notice to the department and payment of the  
21    transfer fee specified in Section 8280.6, the replacement vessel  
22    may be used for the taking and landing of Dungeness crab for any  
23    and all of the unexpired portion of the permit year and that person  
24    is eligible for a permit pursuant to Section 8280.1 for the use of  
25    that replacement vessel in subsequent years.

26    (d) The owner of a permitted vessel may transfer the permit to  
27    a vessel of greater capacity that was owned by that person on or  
28    before November 15, 1995, not to exceed 10 feet longer in length  
29    overall than the vessel for which the permit was originally issued  
30    or to a vessel of greater capacity purchased after November 15,  
31    1995, not to exceed 5 feet longer in length overall than the vessel  
32    for which the permit was originally issued.

33    (e) The department, upon recommendation of the Dungeness  
34    crab review panel, may authorize the owner of a permitted vessel  
35    to transfer the permit to a replacement vessel that was owned by  
36    that person on or before April 1, 1996, that does not fish with trawl  
37    nets that is greater than five feet longer in length overall than the  
38    vessel for which the permit was originally issued, if all of the  
39    following conditions are satisfied:

1 (1) A vessel of a larger size is essential to the owner for  
2 participation in another fishery other than a trawl net fishery.

3 (2) The owner held a permit on or before January 1, 1995, for  
4 the fishery for which a larger vessel is needed and has participated  
5 in that fishery.

6 (3) The permit for the vessel from which the permit is to be  
7 transferred qualified pursuant to paragraph (1) of subdivision (b)  
8 of Section 8280.1.

9 (4) The vessel to which the permit is to be transferred does not  
10 exceed 20 feet longer in length overall than the vessel for which  
11 the permit was originally issued and the vessel to which the permit  
12 is to be transferred does not exceed 60 feet in overall length.

13 (f) A transfer of a permit to a larger vessel shall not be allowed  
14 more than one time. If a permit is transferred to a larger vessel,  
15 any Dungeness crab vessel permit for that permit year or any  
16 subsequent permit years for that larger vessel shall not be  
17 transferred to another larger vessel. The department shall not  
18 thereafter issue a Dungeness crab vessel permit for the use of the  
19 original vessel from which the permit was transferred, except that  
20 the original vessel may be used to take or land Dungeness crab  
21 after that transfer if its use is authorized pursuant to another  
22 Dungeness crab vessel permit subsequently transferred to that  
23 vessel pursuant to this paragraph.

24 (g) (1) Upon the written approval of the department, the owner  
25 of a vessel to whom the Dungeness crab vessel permit has been  
26 issued, *which has had Dungeness crab landings of not less than*  
27 *5,000 pounds cumulative for the past two years*, may temporarily  
28 transfer the permit to another replacement vessel *of equivalent size*  
29 *and capacity of the vessel, no greater than 10 feet in length, from*  
30 *which the permit is transferred*, for which use in the Dungeness  
31 crab fishery is not permitted pursuant to this section or Section  
32 8280.1, for a period of not more than six months during the current  
33 permit year if the vessel for which the permit was issued is  
34 seriously damaged, suffers major mechanical breakdown, or is lost  
35 or destroyed, as determined by the department, upon approval of  
36 the director. The owner of the vessel shall submit proof that the  
37 department may reasonably require to establish the existence of  
38 the conditions of this paragraph. Upon approval by the director,  
39 the owner of a lost or destroyed vessel granted a six-month

1 temporary transfer under this section may be granted an additional  
2 six-month extension of the temporary transfer.

3 (2) Notwithstanding subdivision (e) of Section 8280.2, in the  
4 event of loss or destruction of a vessel for which a Dungeness crab  
5 vessel permit was issued, or serious damage that renders the vessel  
6 inoperable, and upon written approval of the department, the owner  
7 of the vessel to whom the permit was issued may retain the permit  
8 and may transfer the permit to another vessel *of equivalent size*  
9 *and capacity of the vessel that was lost or damaged* during the  
10 period of two years after the loss or damage of the vessel for which  
11 the permit was originally issued. The owner of the lost or damaged  
12 vessel shall submit proof that the department may reasonably  
13 require to establish the loss or damage of the vessel. If the permit  
14 is not transferred to another vessel owned by the person to whom  
15 the vessel permit was originally issued within two years of the loss  
16 or damage, the permit shall be revoked.

17 (h) Upon written approval of the department, the owner of a  
18 vessel to whom the Dungeness crab vessel permit has been issued  
19 may retain that permit upon the sale of that permitted vessel for  
20 the purpose of transferring the permit to another vessel to be  
21 purchased by that individual within one year of the time of sale of  
22 the vessel for which the permit was originally issued if the  
23 requirements of this section are satisfied, including the payment  
24 of transfer fees. If the permit is not transferred to a new vessel  
25 owned by the person to whom the vessel permit was originally  
26 issued within one year of the sale of the vessel for which it was  
27 originally issued, or if the person does not retain ownership of the  
28 new vessel to which the permit is transferred for a period of not  
29 less than one year, the permit shall be revoked.

30 (i) In the event of the death or incapacity of a permitholder, the  
31 permit shall be transferred, upon application, to the heirs or assigns,  
32 or to the working partner, of the permitholder, together with the  
33 transfer of the vessel for which the permit was issued, and the new  
34 owner may continue to operate the vessel under the permit, renew  
35 the permit, or transfer the permit upon sale of the vessel pursuant  
36 to subdivision (b).

37 (j) This section shall become inoperative on April 1, 2019, and,  
38 as of January 1, 2020, is repealed, unless a later enacted statute,  
39 that becomes operative on or before January 1, 2020, deletes or  
40 extends the dates on which it becomes inoperative and is repealed.

1     SEC. 3. Section 8841 of the Fish and Game Code is amended  
2     to read:

3     8841. (a) The commission is hereby granted authority over all  
4     state-managed bottom trawl fisheries not managed under a federal  
5     fishery management plan pursuant to the *federal*  
6     Magnuson-Stevens Fishery Conservation and Management Act  
7     (16 U.S.C. Sec. 1801 et seq.) or a state fishery management plan  
8     pursuant to Part 1.7 (commencing with Section 7050), to ensure  
9     that resources are sustainably managed, to protect the health of  
10    ecosystems, and to provide for an orderly transition to sustainable  
11    gear types in situations where bottom trawling may not be  
12    compatible with these goals.

13    (b) The commission is hereby granted authority to manage all  
14    of the following fisheries in a manner that is consistent with this  
15    section and Part 1.7 (commencing with Section 7050):

16    (1) California halibut.

17    (2) Sea cucumber.

18    (3) Ridge-back, spot, and golden prawn.

19    (4) Pink shrimp.

20    (c) The commission is also granted authority over other types  
21    of gear targeting the same species as the bottom trawl fisheries  
22    referenced in subdivision (a) to manage in a manner that is  
23    consistent with the requirements of Part 1.7 (commencing with  
24    Section 7050).

25    (d) Every commercial bottom trawl vessel issued a state permit  
26    is subject to the requirements and policies of the federal groundfish  
27    observer program (50 C.F.R. 660.360).

28    (e) ~~The~~ *Notwithstanding subdivision (h),* the commission may  
29    only authorize additional fishing areas for bottom trawls *in waters*  
30    *of the state* after it determines, based on the best available scientific  
31    information, that bottom trawling in those areas is sustainable,  
32    does not harm bottom habitat, and does not unreasonably conflict  
33    with other users.

34    (f) It is unlawful to use roller gear more than eight inches in  
35    diameter.

36    (g) Commencing April 1, 2006, it is unlawful to fish  
37    commercially for prawns or pink shrimp, unless an approved  
38    bycatch reduction device is used with each net. On or before April  
39    1, 2006, the commission shall approve one or more bycatch  
40    reduction devices for use in the bottom trawl fishery. For purposes

1 of this subdivision, a rigid grate fish excluder device is the  
2 approved type of bycatch reduction device unless the commission,  
3 the Pacific Marine Fishery Management Council, or the National  
4 Marine Fisheries Service determines that a different type of fish  
5 excluder device has an equal or greater effectiveness at reducing  
6 bycatch. If the commission does not approve a bycatch reduction  
7 device prior to April 1, 2006, then a device that is approved by the  
8 Pacific Marine Fishery Management Council or the National  
9 Marine Fisheries Service shall be deemed approved by the  
10 commission.

11 (h) Except as provided in Section 8495 or 8842, it is unlawful  
12 to engage in bottom trawling in ocean waters of the state.

13 (i) This section does not apply to the use of trawl nets pursuant  
14 to a scientific research permit.

15 (j) The commission shall facilitate the conversion of bottom  
16 trawlers to gear that is more sustainable if the commission  
17 determines that conversion will not contribute to overcapacity or  
18 overfishing. The commission may participate in, and encourage  
19 programs that support, conversion to low-impact gear or capacity  
20 reduction by trawl fleets. The department ~~may~~ *shall* not issue new  
21 permits to bottom trawlers to replace those retired through a  
22 conversion program.

23 (k) As soon as practicable, but not later than May 1, 2005, the  
24 commission and the department shall submit to the Pacific Fishery  
25 Management Council and the National Marine Fisheries Service  
26 a request for federal management measures for the pink shrimp  
27 fishery that the commission and the department determine are  
28 needed to reduce bycatch or protect habitat, to account for  
29 uncertainty, or to otherwise ensure consistency with federal  
30 groundfish management.

31 (l) No vessel may utilize bottom trawling gear without a state  
32 or federal permit.

33 *SEC. 4. Section 9002.5 is added to the Fish and Game Code,*  
34 *to read:*

35 *9002.5. (a) Notwithstanding Section 9002, any person holding*  
36 *a commercial fishing license may retrieve and bring to shore any*  
37 *Dungeness crab trap or traps belonging to any person, where a*  
38 *trap or traps were lost, abandoned, or are otherwise present in*  
39 *ocean waters within District 10 between 96 hours after the close*  
40 *of the commercial Dungeness crab season until 96 hours prior to*



1 *the next commercial Dungeness crab season in District 10 and,*  
2 *within Districts 6, 7, 8, and 9, between 96 hours after the close of*  
3 *the commercial Dungeness crab season until 96 hours prior to the*  
4 *next commercial Dungeness crab season in Districts 6, 7, 8, and*  
5 *9. This section does not apply to traps used for recreational crab*  
6 *fishing.*

7 *(b) The department, in consultation with Dungeness crab*  
8 *permitholders or their representatives, shall establish regulations*  
9 *as necessary to implement and enforce this section, including*  
10 *provisions for the notification of owners of traps retrieved*  
11 *following the close of the Dungeness crab fishery each year, any*  
12 *retrieval fee, and the sale or auction of retrieved traps.*

13 *(c) This section shall become inoperative on April 1, 2019, and,*  
14 *as of January 1, 2020, is repealed, unless a later enacted statute,*  
15 *that becomes operative on or before January 1, 2020, deletes or*  
16 *extends the dates on which it becomes inoperative and is repealed.*

17 ~~SECTION 1. Section 2901 of the Fish and Game Code is~~  
18 ~~amended to read:~~

19 ~~2901. (a) A local agency may establish an assessment district~~  
20 ~~pursuant to Article 3.1 (commencing with Section 50060) of~~  
21 ~~Chapter 1 of Part 1 of Division 1 of Title 5 of the Government~~  
22 ~~Code for the improvement or maintenance of natural habitat, in a~~  
23 ~~manner consistent with the policies and procedures of this code.~~  
24 ~~Funds generated pursuant to this chapter shall not be allocated to~~  
25 ~~implement a plan without the approval of the owner of the land to~~  
26 ~~be improved.~~

27 ~~(b) A local agency may provide for the long-term maintenance~~  
28 ~~of natural habitat pursuant to Section 50060.5 of the Government~~  
29 ~~Code only pursuant to a plan for the conservation of natural habitat~~  
30 ~~that is specifically authorized by this code and approved by the~~  
31 ~~department.~~